

and is now no more. (i) It is also admitted, that *The Chesapeake and Ohio Canal Company*, as the devisee or purchaser of all the estate of *The Potomac Company*, can only take and hold subject to all the incumbrances of which the title deeds of that company, that is, the acts of Assembly by which they were incorporated gave them notice, by their being specified therein. (j) And, consequently, if this plaintiff can establish his claim against the estate of the defunct, it must be allowed and sustained as equally available against these defendants, who have taken subject thereto.

Supposing that act of incorporation, (k) without having guaranteed any thing like a monopoly in favor of the plaintiff as against any one, to have secured to him the water rights to the full extent of his pretensions; then they amount to no more than to a right to so many mill-sites as can be laid out upon his land, so far as it lies along the river, and is conterminous with the canal, constructed under the authority of that act, and nothing more—conceding, for the present, the correctness of this claim, the next inquiry is, whether the acts imputed to the defendants can do any such injury as is complained of.

The plaintiff claims to have the canal considered as the head race to his mill-sites. The projected dam, which the defendants are constructing, it is perfectly manifest, even if it should divert every drop of water from the original bed of the river into it, cannot, in that way, do his property any harm; because all the water which he claimed the right to use, would be thus poured into the head race of his mill-site. Nor can the raising of this dam four feet higher be of any injury to it; on the contrary, it must be beneficial; because, instead of giving him the command, as he now has, of a head of only two feet of water, he will have six feet in his head race—and so far as the defendants may have a right to conduct the water, by means of their canal, to mill-sites outside of, and below that owned by the plaintiff, it will be seen, that every principle of law, shewn to be applicable to a natural mill-site, bears with equal force upon those of the description claimed by the plaintiff—and, therefore, unless he can shew, that the defendants, as owners of outer mill-sites, have so diverted the water as to leave not the usual quantity for his use, he has no cause of complaint. But, that is not alleged or pretended. Therefore, upon these

(i) *Curson v. African Company*, 1 Vern. 121; 1785, ch. 39; 1801, ch. 104.—
 (j) 1784, ch. 33, &c.—(k) 1784, ch. 33.